

AMENDED IN ASSEMBLY JUNE 30, 2002

AMENDED IN SENATE MAY 15, 2002

AMENDED IN SENATE FEBRUARY 25, 2002

SENATE BILL

No. 1315

Introduced by Senator Sher

January 24, 2002

An act to add Chapter 5 (commencing with Section 127625) to Part 2 of Division 107 of the Health and Safety Code, relating to public health; Chapter 12 (commencing with Section 14977) to Division 3 of Title 2 of the Government Code, relating to pharmaceuticals.

LEGISLATIVE COUNSEL'S DIGEST

SB 1315, as amended, Sher. Pharmaceuticals: bulk purchasing.

Existing law authorizes certain state entities to purchase drugs for health purposes.

This bill would authorize the Department of General Services to enter into contracts on a bid or negotiated basis with manufacturers and suppliers of single source or multisource drugs, and would authorize the department to obtain from them discounts, rebates, or refunds as permissible under federal law.

This bill would require the State Department of Mental Health, the Department of Corrections, the Department of the Youth Authority, and the State Department of Developmental Services to participate in the program authorized by this bill. This bill would also authorize other state and local entities to elect to participate in the program.

This bill would authorize the Department of General Services to contract with a pharmaceutical benefits manager for implementing the negotiating of price discounts, rebates or other options for, and

purchases of, prescription drugs. The bill would also require the manager to act as a consultant to the department.

This bill would authorize the Department of General Services to explore additional strategies for managing drug costs.

~~Existing law requires the State Department of Health Services to purchase vaccines and biological products in bulk from the federal Centers for Disease Control and Prevention or other sources at the lowest cost possible for use by providers in the immunization of children under the Medi-Cal and child health and disability prevention programs.~~

~~Existing law authorizes the Director of Corrections to adopt regulations relating to rebates for the purchase of pharmaceuticals, to enter into interagency agreements in this regard, and to contract for the services of a pharmaceutical benefits manager for specified services relating to purchasing pharmaceuticals for the treatment of offenders in state custody.~~

~~This bill would require the Department of General Services to execute prescription drug purchasing agreements with certain state entities that purchase pharmaceuticals, unless the entity can purchase, and provide for the delivery of, prescription drugs at a price that results in a lower net price for all pharmaceutical contracts. The bill would authorize the department to enter into a prescription drug purchasing agreement with any other state entity or a county entity or school district that chooses to participate. The bill would specify the authority and duties of the department under these provisions, including the authority to appoint and contract with a pharmaceutical benefits manager and to contract with any other entity that negotiates prescription drug rebates and discounts to negotiate prescription drug contracts.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. (a) The Legislature finds and declares all of the~~
- 2 ~~SECTION 1. (a) The Legislature finds and declares all of the~~
- 3 ~~following:~~
- 4 ~~(1) Many different state, district, county, and municipal~~
- 5 ~~governmental entities purchase prescription drugs for individuals~~
- 6 ~~served by those entities.~~

1 (2) Currently, the Department of General Services uses the bid
2 process to develop contracts with drug manufacturers on behalf of
3 some state agencies. However, many state, district, county, and
4 municipal entities are not included in this current purchasing
5 process.

6 (3) The Department of General Services does not have
7 sufficient direction from the Legislature to maximize savings.

8 (4) By better coordinating bulk purchasing contracts and
9 providing purchasing procedures and options, the Department of
10 General Services may be able to negotiate better prices for drugs
11 on behalf of participating governmental entities.

12 (b) It is the intent of the Legislature in enacting this act to
13 coordinate bulk purchasing or prescription drugs, and authorize
14 the Department of General Services to investigate and implement
15 other options and strategies to achieve the greatest savings on
16 prescription drugs with prescription drug manufacturers and
17 wholesalers.

18 SEC. 2. Chapter 12 (commencing with Section 14977) is
19 added to Division 3 of Title 2 of the Government Code, to read:

20
21 CHAPTER 12. PURCHASE OF PRESCRIPTION DRUGS FOR
22 GOVERNMENT AGENCIES
23

24 14977. As used in this chapter, “department” means the
25 Department of General Services.

26 14977.1. (a) Notwithstanding any other provision of law, the
27 Department of General Services may enter into exclusive or
28 nonexclusive contracts on a bid or negotiated basis with
29 manufacturers and suppliers of single source or multisource drugs.
30 The department may obtain from those manufacturers and
31 suppliers, discounts, rebates, or refunds based on quantities
32 purchased insofar as permissible under federal law. Contracts
33 entered into pursuant to this chapter may include price discounts,
34 rebates, refunds, or other strategies aimed at managing escalating
35 prescription drug prices.

36 (b) Contracts under this chapter shall be exempt from Chapter
37 2 (commencing with Section 10290) of Part 2 of Division 2 of the
38 Public Contract Code.

1 14977.5. (a) *The following state agencies shall participate in*
2 *the prescription drug bulk purchasing program authorized under*
3 *this chapter.*

4 (1) *State Department of Mental Health.*

5 (2) *Department of Corrections.*

6 (3) *Department of the Youth Authority.*

7 (4) *State Department of Developmental Services.*

8 (b) *Any state, district, county, or municipal governmental*
9 *entity, other than a state entity specified in subdivision (a), may*
10 *elect to participate in the coordinated purchasing program.*

11 14978. *The department, in consultation with the agencies*
12 *listed in subdivision (a) of Section 14977.5, may investigate and*
13 *implement other options and strategies to achieve the greatest*
14 *savings on prescription drugs with prescription drug*
15 *manufacturers and wholesalers.*

16 14979. *The department may appoint and contract with a*
17 *pharmaceutical benefits manager for purposes of the prescription*
18 *drugs purchased under this chapter. The pharmaceutical benefits*
19 *manager may do all of the following:*

20 (a) *Negotiate price discounts, rebates, or other options that*
21 *achieve the greatest savings on prescription drugs with*
22 *prescription drug manufacturers and wholesalers.*

23 (b) *Purchase prescription drugs for participating state,*
24 *district, county, or municipal governmental entities.*

25 (c) *Act as a consultant to the department.*

26 14980. *The department may explore additional strategies for*
27 *managing the increasing costs of prescription drugs, including:*

28 (a) *Coordinating programs offered by pharmaceutical*
29 *manufacturers that provide prescription drugs for free or at*
30 *reduced prices.*

31 (b) *Studying the feasibility and appropriateness of including in*
32 *the bulk purchasing programs entities in the private sector,*
33 *including employers, providers, and individual consumers.*

34 (c) *Implementing other strategies, as permitted under state and*
35 *federal law, aimed at managing escalating prescription drug*
36 *prices.*

37 ~~following:~~

38 ~~(1) Many different state and county agencies purchase~~
39 ~~prescription drugs for individuals served by those agencies.~~

1 ~~(2) Currently, the Department of General Services negotiates~~
2 ~~contracts with drug manufacturers on behalf of some state~~
3 ~~agencies. However, several state and county agencies are not~~
4 ~~included in this current purchasing process.~~

5 ~~(3) The state and county agencies and the department do not~~
6 ~~have sufficient direction from the Legislature to maximize state~~
7 ~~savings.~~

8 ~~(4) By better coordinating bulk purchasing contracts and~~
9 ~~providing better information about drug efficacy and costs as well~~
10 ~~as new purchasing procedures and options for state and county~~
11 ~~agencies the state can negotiate lower prices for drugs on behalf~~
12 ~~of participating agencies.~~

13 ~~(5) The state should study the option of including elements of~~
14 ~~the private sector in its bulk purchasing program.~~

15 ~~(b) It is the intent of the Legislature in enacting this legislation~~
16 ~~to coordinate bulk purchasing of prescription drugs, implement~~
17 ~~“best practices” guidelines for individuals prescribing~~
18 ~~prescription drugs under this program, and allow the Department~~
19 ~~of General Services to investigate and implement other options~~
20 ~~and strategies to achieve the greatest savings on prescription drugs~~
21 ~~with prescription drug manufacturers and wholesalers.~~

22 ~~SEC. 2. Chapter 5 (commencing with Section 127625) is~~
23 ~~added to Part 2 of Division 107 of the Health and Safety Code, to~~
24 ~~read:~~

25
26 ~~CHAPTER 5. BULK PURCHASING OF PHARMACEUTICALS~~
27

28 ~~127625. As used in this chapter, the following definitions~~
29 ~~shall apply:~~

30 ~~(a) “Audit” means a systemic examination and collection of~~
31 ~~sufficient, competent evidential matter needed for an auditor to~~
32 ~~attest to the fairness of management’s assertions in financial~~
33 ~~statements and to evaluate whether management has sufficiently~~
34 ~~and effectively carried out its responsibilities and complied with~~
35 ~~applicable laws and regulations, conducted by an independent~~
36 ~~certified public accountant.~~

37 ~~(b) “Department” means the Department of General Services.~~

38 ~~(c) “Pharmaceutical benefits manager” means an entity that~~
39 ~~procures prescription drugs at a negotiated rate under a contract~~

~~1 and that may serve as a third-party prescription drug benefit
2 administrator.~~

~~3 (d) “Prescription drug purchasing agreement” means a written
4 agreement to pool prescription drug purchases in order to
5 negotiate the best possible prices and to delegate authority to the
6 department to make prescription drug contracts for these
7 purchases.~~

~~8 (e) “Prescription drug,” “pharmaceutical,” or “drug” means
9 a substance recognized as a drug in the United States
10 Pharmacopoeia, the National Formulary, or the Homeopathic
11 Pharmacopoeia of the United States, or any supplement thereto,
12 that is dispensed pursuant to a prescription issued by an authorized
13 health care practitioner for use in the diagnosis, cure, mitigation,
14 treatment, or prevention of disease in a human, as well as a
15 prescription drug delivery system, testing kit, and related supplies;
16 or any substance approved for use by the federal Food and Drug
17 Administration.~~

~~18 127627. (a) Unless the state entity is authorized to elect not
19 to participate pursuant to subdivision (b) of Section 127631, the
20 following state entities shall participate in the prescription drug
21 bulk purchasing program authorized under this chapter:~~

~~22 (1) State Department of Mental Health.~~

~~23 (2) Department of Corrections.~~

~~24 (3) Department of the Youth Authority.~~

~~25 (4) State Department of Developmental Services.~~

~~26 (5) California State University.~~

~~27 (b) Any state or county department, agency, authority,
28 institution, or program, or school district, other than a state entity
29 specified in subdivision (a), may elect to participate in the
30 coordinated purchasing program.~~

~~31 127631. (a) The department shall execute prescription drug
32 purchasing agreements with all state entities specified in
33 subdivision (a) of Section 127627.~~

~~34 (b) The department shall develop procedures that these state
35 entities shall follow in purchasing pharmaceuticals. An entity
36 listed under subdivision (a) of Section 127627 may elect not to
37 participate in the bulk purchasing of prescription drugs, pursuant
38 to this chapter and the procedures established by the department,
39 only if the entity is able to purchase, and provide for the delivery
40 of, prescription drugs at a price that results in a lower net price for~~

1 ~~all pharmaceutical contracts. An entity electing not to participate~~
2 ~~shall report to the department the price of any pharmaceuticals~~
3 ~~purchased and the name of the wholesaler, retailer, or~~
4 ~~manufacturer selling the pharmaceuticals.~~

5 ~~127633. (a) At the option of any entity specified in~~
6 ~~subdivision (b) of Section 127627, the department may execute~~
7 ~~prescription drug purchasing agreements with that entity.~~

8 ~~(b) The department shall solicit interest for participation in the~~
9 ~~bulk purchasing program from entities specified in subdivision (b)~~
10 ~~of Section 127627.~~

11 ~~(c) An entity specified in subdivision (b) of Section 127627~~
12 ~~that elects to participate in the bulk purchasing program shall enter~~
13 ~~into a prescription drug purchasing agreement with the~~
14 ~~department. The department or pharmaceutical benefits manager~~
15 ~~acting on the department's behalf shall include the terms of those~~
16 ~~agreements in new requests for proposals or when contracts are~~
17 ~~renegotiated with pharmaceutical manufacturers. For purposes of~~
18 ~~implementing this section, the department may enter into new~~
19 ~~agreements with manufacturers or extend existing contracts.~~

20 ~~127635. (a) The department may appoint, and contract with,~~
21 ~~a pharmaceutical benefits manager and may contract with any~~
22 ~~other entity that negotiates prescription drug rebates and~~
23 ~~discounts, for purposes of the prescription drug bulk purchasing~~
24 ~~program established under this chapter. The department may~~
25 ~~negotiate and execute pharmaceutical benefits management~~
26 ~~contracts for the purpose of managing rising prescription drug~~
27 ~~costs for the state and all parties that have executed prescription~~
28 ~~drug purchasing agreements with the department.~~

29 ~~(b) The pharmaceutical benefits manager may do all of the~~
30 ~~following:~~

31 ~~(1) Negotiate price discounts, rebates, or other options that~~
32 ~~achieve the greatest savings on prescription drugs with~~
33 ~~prescription drug manufacturers and wholesalers.~~

34 ~~(2) Purchase prescription drugs for participating state and local~~
35 ~~governmental entities.~~

36 ~~(3) Act as a consultant to the department.~~

37 ~~(c) The department may perform the activities set forth in~~
38 ~~paragraphs (1) and (2) of subdivision (b).~~

39 ~~(d) Contracts proposed by the pharmaceutical benefits~~
40 ~~manager shall be executed by the Department of General Services~~

~~following approval by the Department of Finance pursuant to Section 127639.~~

~~127639. The Department of Finance shall review any proposed contract, or amendment to an existing contract, authorized by this chapter before it is executed by the Department of General Services. If the Department of Finance makes the following findings, the Department of Finance shall approve the contract and authorize the Department of General Services to execute the contract:~~

~~(a) That the proposed contract meets the requirements of this chapter and would assist in effectively managing the costs for the programs involved.~~

~~(b) That the proposed contract would not result in jeopardizing state funds or funds due to the state.~~

~~127641. The department may renegotiate existing prescription drug contracts to which the agency is a party for the purpose of managing rising drug costs.~~

~~127643. The department shall cause to be conducted an audit of any funds expended pursuant to any prescription drug purchasing agreement or pharmaceutical benefits management contract executed under this chapter for each fiscal year that the prescription drug purchasing agreement or pharmaceutical benefits management contract is in effect. The department shall submit the audit to the Assembly and Senate government policy and fiscal committees upon completion, but in no event later than December 31, after the end of the fiscal year subject to the audit.~~

~~127645. The department may explore innovative strategies by which the state may manage the increasing costs of prescription drugs and increase access to prescription drugs for all of the state's citizens, including by any of the following means:~~

~~(a) Coordinating programs offered by pharmaceutical manufacturers that provide prescription drugs for free or at reduced prices.~~

~~(b) Establishing programs aimed at educating health care practitioners authorized to prescribe prescription drugs on behalf of entities specified in Section 127627 about the relative therapeutic benefits and costs of prescription drugs, with an emphasis on generic substitution for brand name drugs when available and appropriate, prescribing older, less costly drugs instead of newer, more expensive drugs when appropriate, and~~

1 ~~prescribing lower dosages of prescription drugs, when available~~
2 ~~and appropriate.~~

3 ~~(c) Studying the feasibility and appropriateness of requiring~~
4 ~~prescription drug manufacturers to disclose to the state~~
5 ~~expenditures for advertising, marketing, and promotion, as well as~~
6 ~~for provider incentives and research and development efforts.~~

7 ~~(d) Studying the feasibility and appropriateness of including in~~
8 ~~the bulk purchasing programs entities in the private sector,~~
9 ~~including employers, providers, and individual consumers.~~

10 ~~(e) Implementing other strategies, as permitted under state and~~
11 ~~federal law, aimed at managing escalating prescription drug prices~~
12 ~~and increasing affordable access to prescription drugs for all state~~
13 ~~citizens.~~

14 ~~127647. The department may use existing distribution~~
15 ~~networks, including wholesale and retail distributors, to distribute~~
16 ~~pharmaceuticals for purposes of this chapter.~~

